

## **IN THE DRAWINGS**

The reference to  $\text{OI}_3$  from Figure 4C has been removed.

A reference character has been added to Figure 5C.

Corrected drawings sheets have been submitted in compliance with 37 C.F.R. § 1.121(d). Applicant respectfully requests that the drawing objections be removed.

Attachments:      Replacement Sheets  
                         Annotated Sheets

### **REMARKS**

Reconsideration of the present application, as amended, is respectfully requested. Claims 1-20 are pending. Claims 1, 5, 8, 10, 14 and 17-19 have been amended. No claims have been canceled without prejudice. No claims have been added.

Examiner rejected claims 1-20 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicant has amended the claims to overcome this rejection by clarifying that the claims are directed to methods performed by a computing device. Applicant respectfully requests the Examiner to remove these rejections.

Examiner rejected claims 1-20 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant wishes to thank the Examiner for the careful examination, and has amended the claims to overcome these rejections. Applicant respectfully requests the Examiner to withdraw these rejections.

Examiner rejected claims 1, 7-10, and 16-20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,029,141 to Bezos.

In regards to claim 1, the Examiner states that, "splitting the order by assigning fulfillment of items to most-favorable fulfillers that can fulfill the order (paragraph spanning C. 2-3, customer shopping cart order is split among items ordered from multiple different sites." Office Action, page 9. Applicant respectfully traverses the Examiner's rejection and submits that Bezos teaches away from this limitation of claim 1. In Bezos' system, the fulfillers are the sites from which the user can order. That is, the system creates a single check-out shopping cart, for purchases from multiple

fulfillers. In contrast, the purpose of the present invention is to select fulfillers based on numerous available options, for items in a single order.

Claim 1 states:

1. A method to be performed on a computing device for providing improved assignment of product orders to one or more fulfillers, the method comprising:
  - receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items;
  - ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria;
  - if all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items; otherwise
  - splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items.

(Emphasis Added)

Applicant submits that Bezos does not disclose splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items. Bezos merely discloses a single order that may contain items from multiple referrer sites. Those referrer sites are the fulfillers who will be used for those purchases. “An important benefit of the shopping cart feature is that it allows the customer to select products from multiple different sites, and then perform a single check-out to purchase all of the selected products.” Bezos, col. 2, line 66 – col. 3, line 2. Allowing items from a single order to come from multiple sites is not the same as allowing items from a single order to be split amongst multiple fulfillers. Bezos is completely silent on allowing multiple fulfillers to fulfill items from a single order. As such, Bezos fails to disclose each and every limitation of claim 1. Therefore, Bezos fails to anticipate claim 1 under 35 U.S.C. §102(b). Applicant reserves the right to swear behind the effective date of this reference.

Dependent claims 7-9 depend upon and include the limitations of claim 1.

Therefore, Bezos also fails to anticipate claims 7-9 under 35 U.S.C. §102(b).

Claim 10 states:

10. A method to be performed on a computing device for providing improved fairness when assigning product orders to one or more fulfillers, the method comprising:  
    receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items;  
    determining desirable attributes for fulfilling the order among a set of available fulfillers;  
    ranking the set of fulfillers from most favorable to least favorable, based on said desirable attributes;  
    if all of the order items of the order can be fulfilled by a single fulfiller, assigning the order to the most-favorable fulfiller that can fulfill all of the order items; and  
    if all of the order items of the order cannot be fulfilled by a single fulfiller, assigning the order to a subset comprising the most-favorable fulfillers that, collectively, can fulfill all order items of the order.

(Emphasis Added)

As stated above, Bezos fails to disclose, “assigning the order to a subset comprising the most-favorable fulfillers that, collectively, can fulfill all order items of the order.” As noted above, Bezos discloses a single order that may contain items from multiple referrer sites. Allowing items from a single order to come from multiple sites is not the same as allowing items from a single order to be split amongst multiple fulfillers. Bezos is completely silent on allowing multiple fulfillers to fulfill items from a single order. As such, Bezos fails to disclose each and every limitation of claim 10. Therefore, Bezos fails to anticipate claim 10 under 35 U.S.C. §102(b).

Dependent claims 17-20 depend upon and include the limitations of claim.

Therefore, Bezos also fails to anticipate claims 17-20 under 35 U.S.C. §102(b).

Examiner rejected claims 1, 6-10, and 15-20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,402,336 to Spiegelhoff. Spiegelhoff discusses a

mechanism for a particular user to determine which warehouse to order certain goods from. However, Spiegelhoff does not teach or suggest "if all of the order items of the order cannot be fulfilled by a single fulfiller, assigning the order to a subset comprising the most-favorable fulfillers that, collectively, can fulfill all order items of the order." Rather, Spiegelhoff's system assumes that the user manually selects a single supplier based on availability and price. The concept of splitting the order among multiple fulfillers automatically, if it cannot be fulfilled by a single fulfiller, is not taught or suggested by Spiegelhoff.

In fact, the Examiner does not state how the limitation, "if all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller than can fulfill all the order items" is disclosed by Spiegelhoff. The Examiner is completely silent regarding this limitation.

Speigelhoff is interested in splitting an order into multiple warehouses if doing so is cheaper than using a single fulfiller. "Referring to FIGS. 4 and 5, selecting the Minimum Order Search routine of option 1 at block 56 from the menu of FIG. 3 enables the orderer to conduct a search amongst available warehouses and to order each item from the lowest price warehouse, assuming that a designated minimum order for the primary warehouse has been met. If the designated minimum order has not been met, the system repeats the search and determines a revised allocation of resources which minimizes total cost to the retailer while still meeting the required minimum order for the primary warehouse 24." Spiegelhoff, col. 7, lines 4 – 14. Emphasis Added. This is the opposite of assigning the order to a subset comprising the most-favorable fulfillers "if all of the order items of the order cannot be fulfilled by a single fulfiller." . Hence,

Spiegelhoff teaches away from the claims. As such, Spiegelhoff fails to disclose each and every limitation of claim 1. Therefore, Spiegelhoff fails to anticipate claim 1 under 35 U.S.C. §102(b).

Dependent claims 6-9 depend upon and include the limitations of claim 1. Therefore, Spiegelhoff also fails to anticipate claims 6-9 under 35 U.S.C. §102(b).

Claim 10 recites in part "if all of the order items of the order cannot be fulfilled by a single fulfiller, assigning the order to a subset comprising the most-favorable fulfillers that, collectively, can fulfill all order items of the order." Applicant respectfully submits that Spiegelhoff fails to disclose all the limitations of claim 10 for the same reasons as described above in regards to claim 1. Therefore, Spiegelhoff fails to disclose each and every limitation of independent claim 10. Therefore, Spiegelhoff fails to anticipate claim 10 under 35 U.S.C. §102(b).

Dependent claims 15-20 depend upon and include the limitations of claim 10. Therefore, Spiegelhoff also fails to anticipate claims 15-20 under 35 U.S.C. §102(b).

Examiner rejected claims 2-5 and 11-14 under 35 U.S.C. §103(a) as being unpatentable over Spiegelhoff.

Dependent claim 2-5 and 11-14 depend upon and include the limitations of independent claims 1 and 10, respectively. As stated above, Spiegelhoff fails to teach or suggest "if all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller than can fulfill all the order items." The Examiner takes official notice that minimizing costs is . However, Applicant's respectfully submit that neither Spiegelhoff nor the Official Notice teach or suggest assigning fulfillment to the most-favorable fulfiller that can fulfill all of the order

items. Rather, the Examiner's notice that cost-consciousness is known in the art teaches away from making a choice based on the ability of a single fulfiller to fulfill the entire order. Therefore, even with Official Notice being taken as to minimizing costs, the combination still fails to disclose all limitations of claims 1 and 10, as discussed above. As such, the combination of Spiegelhoff and Official Notice fails to make claims 2-5 and 11-14 obvious under 35 U.S.C. §103(a).

Applicant respectfully submits that in view of the amendments and discussion set forth herein, the applicable rejections have been overcome. Accordingly, the present and amended claims should be found to be in condition for allowance.

If a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Judith Szepesi at (408) 720-8300.

If there are any additional charges/credits, please charge/credit our deposit account no. 02-2666.

Dated: \_\_\_\_\_

7/25/05

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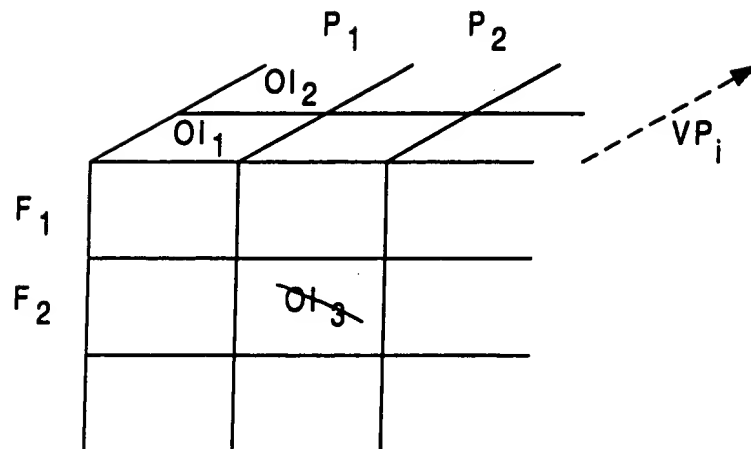
Respectfully submitted,  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP



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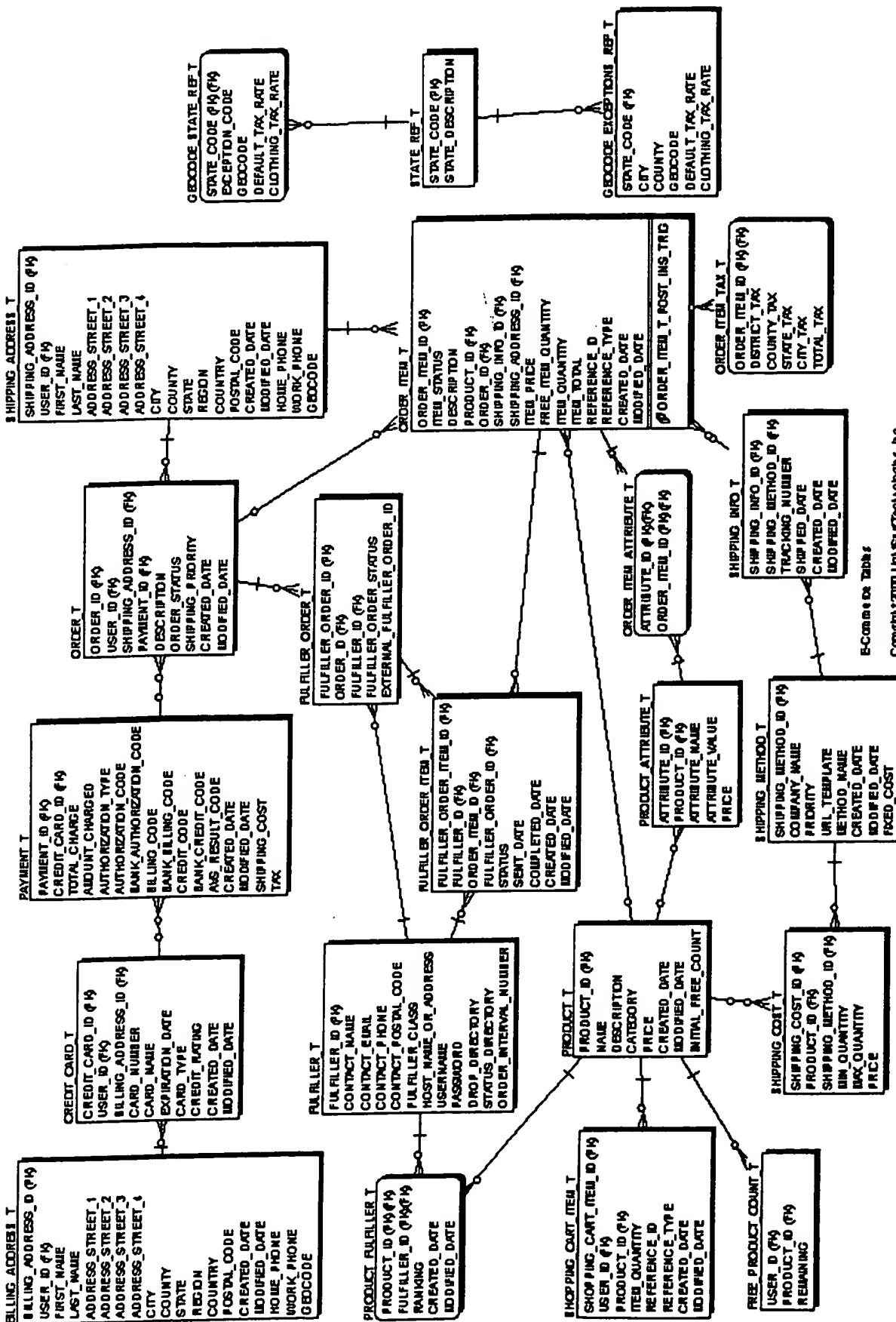
	$P_1$	$P_2$
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*FIG. 4B*



*FIG. 4C*





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FIG. 5C